

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-29728-2018
RESERVED ON: 13.12.2023
PRONOUNCED ON: 26.02.2024

ARVIND SINGH DHALIWAL

....PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE ARUN PALLI
CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Amit Jain, Sr. Advocate with
Mr. Chetan Salathia, Advocate for the petitioner.

Mr. Ankur Mittal, Addl. AG Haryana with
Mr. Deepak Bhardwaj, DAG, Haryana.
Mr. Karan Jindal, Assistant AG Haryana.

Mr. Deepak Sabharwal, Advocate for HSVP.

VIKRAM AGGARWAL, J.

1. The petitioner herein has invoked the writ jurisdiction of this Court seeking the issuance of a writ of certiorari quashing the orders dated 06.04.2017 (Annexure P-23), 18.04.2013 (Annexure P-21), 28.07.1992 (Annexure P-16) and 04.12.1990 (Annexure P-15) (Colly), the same being illegal and arbitrary as also being violative of Articles 14 and 19(1)(g) of the Constitution of India. He also seeks the restoration of the offer of allotment of plot No.308 Industrial Area, Phase-II, Panchkula.
2. The petitioner is a non-resident Indian. Plot No.308 Industrial Area, Phase-II, Panchkula (hereinafter referred to as the 'disputed plot') is claimed to have been ear marked for the petitioner in pursuance to an application moved by him to set up a unit for the manufacture of tractor parts. The offer of allotment with regard to the disputed plot measuring 1000 square meters was made on

16.02.1982 (Annexure P-1). The petitioner was required to complete the formalities detailed out in the offer of allotment.

2.1 The petitioner, as pleaded in the writ petition, deposited a sum of 1600£ and ₹27,000/- vide separate demand drafts dated 24.11.1981 and 23.04.1982 respectively, which amounted to the entire payment for the said plot.

2.2 Provisional registration of SSI Unit was issued on 18.09.1984 and the same was submitted to the respondents (Annexure P5). Building plans were submitted for approval on 14.02.1983. A request for extension of time was also submitted. Compliance of all conditions set out in the offer of allotment was made and the respondents were informed that no financial assistance was required by the petitioner for implementation of the project and the petitioner was looking for second hand machinery.

2.3 Various communications were made with the respondents with regard to the implementation schedule etc. (Annexure P7 to Annexure P9). Project report etc. was also submitted along with other documents (Annexure P10 to Annexure P12).

2.4 The respondents, however, continued to insist upon the fulfillment of conditions laid down in the offer of allotment vide letters dated 02.01.1984 and 25.07.1984 (Annexure P13 and Annexure P14).

2.5 The offer of allotment was withdrawn on 04.12.1990 (Annexure P15)(Colly). An appeal was preferred which was also dismissed on 29.07.1992 (Annexure P16). A representation was submitted to the respondents highlighting the grievances of the petitioner (Annexure P17 and Annexure P18).

2.6 A complaint under the Consumer Protection Act, 1986 was also preferred by the petitioner seeking restoration of the plot. The same was, however, was dismissed for non-prosecution on 01.06.2001 (Annexure P19).

2.7 A civil suit for permanent injunction was filed by the petitioner which stood dismissed vide judgment and decree dated 05.03.2009 (Annexure P20).

2.8 On 18.04.2013, the petitioner was informed that the order passed in appeal had been confirmed (Annexure P21).

2.9 The petitioner filed a revision petition under Section 30 (2) of the Haryana Urban Development Authority Act, 1977 (now Haryana Shehri Vikas Pradhikaran Act, 1977) but the same also came to be dismissed on 06.04.2017 (Annexure P-23).

2.10 The petitioner claims that despite the entire cost of the disputed plot having been deposited and construction having been raised, the respondents had acted in an illegal and arbitrary manner.

3. The writ petition has been opposed by the respondents. In the written statement filed by respondent No.5 (since the disputed plot is now under the management of respondent No.5-Haryana State Industrial and Infrastructure Development Corporation Ltd.), the stand taken is that the petitioner did not complete the formalities as laid down in the offer of allotment but instead, vide letter dated 09.08.1982, requested for extension of time to complete the formalities. Three months extension was granted vide letter dated 13.08.1982 (Annexure R2). However, the petitioner failed to complete the formalities and did not inform about the details with regard to financing of the project. Consequently, letter dated 18.10.1983 was issued to the petitioner advising him to complete the formalities within one month failing which the offer would be withdrawn (Annexure R3).

3.1 Vide letter dated 01.11.1983, the petitioner informed that the formalities stood completed. However, no proof was attached. Vide communication dated 09.12.1983, he also claimed to have sent the implementation schedule, project brief, payment receipts etc. but no construction

plan was sent. The letter was again silent on the completion of formality regarding financing. The unit was also not got registered (Annexure R4).

3.2 Reference was also made to other communications (Annexure R5 to Annexure R9) which were made by the parties with regard to completion of formalities but, the formalities remained incomplete.

3.3 Reference has also been made in the written statement to the consumer complaint, civil suit, appeal, revision etc. and it has been averred that the case of the petitioner is devoid of merit.

4. We have heard learned counsel for the parties.

5. Mr. Amit Jain, learned Senior counsel representing the petitioner made strenuous efforts to convince the Court that the impugned orders are illegal and deserve to be set aside. Efforts were made to convince the Court that since the petitioner is settled abroad, he was kept in the dark by his counsel and that he could not avail efficacious legal remedies. It was submitted that the consumer complaint was dismissed on account of non-prosecution whereas the civil suit was also dismissed since the petitioner herein had not appeared as a witness in the same. It was submitted that despite the entire payment having been made and despite it having been communicated to the respondents that no financial assistance was required, they kept on repeating the issue again and again and did not consider the matter from the correct perspective. Learned Senior counsel submitted that the petitioner has been made to suffer for no fault of his. Learned Senior counsel further submitted that the impugned orders are illegal and arbitrary and consequently deserve to be set aside.

6. Per contra, learned counsel representing respondent No. 5 submitted that the conduct of the petitioner does not entitle him to any relief. Reference was made to the offer of allotment and other relevant documents on record including the order passed in appeal and revision as also the orders vide which the consumer

complaint and civil suit were dismissed. It was submitted that, under the circumstances, the writ petition is totally devoid of merit and deserves to be dismissed.

7. We have given our thoughtful consideration to the issue in hand.

8. The offer of allotment is on record as Annexure P1. The disputed plot was measuring 1000 square meters and was situated in Industrial Area, Phase-II, Panchkula. Before the issuance of a formal allotment letter, the petitioner was to complete certain formalities detailed in the offer of allotment. The petitioner is stated to have deposited 1600£ and ₹27,000/- as total consideration which has not been disputed by the respondents. However, there remained a dispute between the parties with regard to fulfillment of the conditions laid down in the offer of allotment (Annexure P1). Whereas the petitioner claims to have fulfilled all conditions, the respondents claim that the same had not been done. These disputed questions are not required to be gone into by this Court. The fact remains that the offer of allotment was withdrawn on 04.12.1990. The petitioner preferred an appeal but the same was dismissed on 29.07.1992 and the order dated 04.12.1990 was upheld. While dismissing the appeal, it was noticed that despite repeated reminders, the appellant, petitioner herein had not fulfilled the formalities set out in the provisional letter of allotment. Instead of challenging the said order passed in appeal, the petitioner filed a complaint before the State Consumer Disputes Redressal Commission in 1998 i.e. six years after the dismissal of the appeal. This complaint was dismissed on 01.06.2001. While dismissing the complaint, it was held as under:-

“2. Notice of the complaint was issued on 8th January 1999. Subsequently the counsel for the complainant had not put in appearance despite repeated adjournments. Today again, neither the complainant nor his counsel is present. It appears that the complainant is not interested to pursue the matter. We

have ourselves perused the entire paper book. After perusing the same we hardly find any merit in the complaint. Accordingly, the complaint is dismissed. However, the complainant may, if so advised, seek his remedy before the civil court.”

A perusal of the aforesaid would show that the complaint was not dismissed solely on account of non-prosecution but it was also found that there was no merit in the complaint.

8.1 Be that as it may, the petitioner then preferred a civil suit in the year 2001 i.e. on 11.12.2001, after the dismissal of consumer complaint. The suit was for permanent injunction directing the defendants therein i.e Haryana Urban Development Authority to issue an allotment letter qua the disputed plot. This suit was dismissed on 05.03.2009 and it was held as under:-

“11. The evidence and arguments advanced by the parties has been discussed above in detail. The plaintiff has placed on record documents Ex.P1 to Ex.P6 as detailed above but he has failed to prove the same in accordance with the law of evidence. The plaintiff has placed on record carbon copy of the project report but its original was never produced in the court. Moreover the letter of intent for allotment of the said industrial plot was provisional. The regular allotment letter was to be issued to the plaintiff on completion of the requisite formalities. But the plaintiff has failed to prove on record that he completed as the requisite formalities.

12. Undisputedly the correspondence for allotment of the industrial plot in question took place between the plaintiff Arbind Singh and the defendants. However the plaintiff himself has not appeared in the court for his statement. He has examined his special Power of attorney Sh. Jagjit Singh Panu who appeared in the witness box as PW1. In Janki Vashdeo Bhojwani and Another vs. Indusind Bank Ltd. 2005(2) C.C.C. page 324, it has been held by Hon’ble Supreme Court of India

that if power of attorney holder has rendered some acts in pursuance of power of attorney he may depose for the principal in respect of such acts but he can not depose for the principal for the acts done by the principal and not by him and in respect of matter which only the principal has a personal knowledge and in respect of which the principal is liable to be cross examined.

13. In view of the above discussion the court is of the opinion that the plaintiff is not entitled for permanent injunction as prayed for. Resultantly issue No.1 is decided against the plaintiff and in favour of the defendants.”

A perusal of the aforesaid shows that the matter was duly considered on merits and the petitioner was non-suited. Admittedly, this judgment has become final as the same was not challenged any further.

8.2. Undeterred, the petitioner then filed a revision petition which was also dismissed on 06.04.2017. It would be relevant to mention that the revision petition was preferred on 05.09.2013, whereas the appeal had been dismissed on 28.07.1992. It is, therefore, clear that the revision petition was filed 21 years after the dismissal of the appeal. Precisely for this reason, the revision petition was dismissed on 06.04.2017. The revisional authority made a reference with regard to the dismissal of the consumer complaint and the civil suit as also the delay of 21 years in preferring the revision petition.

8.3. Still undeterred, the petitioner has preferred the present writ petition. Admittedly, only an offer of allotment was issued to the petitioner and no binding contract came into existence between the parties. The allotment letter was to be issued on fulfillment of certain conditions which, as per the petitioner had been fulfilled but as per the respondent, had not been fulfilled. The offer of allotment was withdrawn. The appeal was dismissed. Consumer complaint was dismissed.

Civil suit filed by the petitioner was dismissed. Thereafter, revision was also

dismissed. The petitioner availed different remedies at different points of time without addressing the real issue. He was repeatedly and consistently non-suited by all authorities. The petitioner has not been able to point out as to how the orders under challenge are erroneous and under what circumstances, the petitioner availed different remedies at different points of time. Under the circumstances, we do not find any occasion to exercise the extraordinary jurisdiction vested by virtue of Article 226 of the Constitution of India.

In view of the aforesaid, we find the writ petition to be totally devoid of merit, apart from the same being totally misconceived and accordingly dismiss the same.

(ARUN PALLI)
JUDGE

(VIKRAM AGGARWAL)
JUDGE

RESERVED ON: 13.12.2023
PRONOUNCED ON: 26.02.2024
Prince Chawla

<i>Whether speaking/reasoned :</i>	<i>Yes/No.</i>
<i>Whether reportable :</i>	<i>Yes/No.</i>